

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S CI 2017 0326

THE QUEEN

v

JAMES GARGASOULAS

<u>JUDGE:</u>	WEINBERG JA
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	29, 30, 31 January and 1 February 2019
<u>DATE OF SENTENCE:</u>	22 February 2019
<u>CASE MAY BE CITED AS:</u>	DPP v Gargasoulas
<u>MEDIUM NEUTRAL CITATION:</u>	[2019] VSC 87

CRIMINAL LAW – Murder of six people and reckless conduct endangering the life of 27 others – Drove at high speed along crowded footpath in Central Business District in order to evade police – Long-term methamphetamine user – ‘Drug induced psychosis’ – Subsequent development of mental illness – Paranoid schizophrenia – *Verdins* principles 1, 3, 4, 5 and 6 considered – Sentenced to life imprisonment – Non-parole period of 46 years fixed.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Crown	Mr R L Gibson SC with Ms G A Coghlan	Mr J Cain, Solicitor for Public Prosecutions
For the Accused	Dr T R Alexander with Mr T Antos	James Harris Lawyers

HIS HONOUR:

- 1 James Gargasoulas, on 20 January 2017 you deliberately drove, at high speed, through a crowd of pedestrians in the Central Business District of Melbourne. You murdered six young people. You also inflicted serious injuries upon 27 others. This was one of the worst examples of mass murder in Australian history. It was entirely fortuitous that you did not kill or injure many more.
- 2 After a trial lasting some five days, a jury found you guilty, on 13 November 2017, of those six murders, and of 27 charges of reckless conduct endangering life. It is now my responsibility to sentence you for these offences. The maximum sentence for murder is life imprisonment, and for reckless conduct endangering life, ten years' imprisonment.
- 3 At about 1.30pm on the day of your offending, you drove a stolen maroon coloured Holden Commodore into the centre of Melbourne. When you reached Bourke Street, you turned left into the Bourke Street Mall.
- 4 The Bourke Street Mall, as its name suggests, is a pedestrian and tram-only section of the Central Business District. On a normal Friday afternoon, it is crowded with people shopping, tourists and those going about their everyday business.
- 5 You deliberately swerved from the tram lines in the Bourke Street Mall onto the southern footpath which was, of course, crowded. You accelerated, mowing down many of the pedestrians who were walking along that footpath. You were obviously well aware of their presence. You were also well aware of the likelihood that by driving through the crowds in the way that you did, you would kill, or at least seriously injure, those that you struck.
- 6 You continued driving along the footpath all the way along the Bourke Street Mall from just opposite the Myer department store, and then past Elizabeth, Queen and William Streets. Eventually, your car came to a stop in Bourke Street, between William and King Streets. You left a trail of destruction behind you.
- 7 The first person whom you struck was Hugh Johnston, a boy aged 13. He sustained

non-life threatening head injuries (charge 1 – reckless conduct endangering life).

- 8 Your car then collided with Dilan Hoole, aged 47. He suffered a broken leg (charge 2 – reckless conduct endangering life).
- 9 Outside the Royal Arcade, you ran down Jelena Susa, aged 30. She suffered a lacerated spleen, pelvic fracture and a spinal injury (charge 3 – reckless conduct endangering life).
- 10 Your next victim was Yosuke Kanno, aged 25. He had just had lunch with his friend, Kashu Matsumoto. Your car struck Mr Kanno with such force that he was flung into the air, and thrown metres forward. He died at the scene from head and chest injuries (charge 4 – murder).
- 11 You also collided with his friend, Mr Matsumoto, who, fortunately, suffered only a minor leg injury (charge 5 – reckless conduct endangering life).
- 12 As you approached the intersection of the Bourke Street Mall and Elizabeth Street, you ran down Michael Hepponstall, aged 49. He sustained lower limb fractures and cuts to his head (charge 6 – reckless conduct endangering life).
- 13 Crossing Elizabeth Street, your car was estimated to have been travelling at about 57 kilometres per hour. Witnesses observed that as it climbed the hill along Bourke Street towards Queen Street, it appeared to be gaining speed. You made no attempt to avoid people, or to slow down. You simply ploughed through them, as I have said, quite deliberately.
- 14 You next struck Erin Shi, aged 18. She was flung into the wall of the Commonwealth Bank at the corner of Elizabeth and Bourke Streets. She suffered critical head injuries, rib fractures, right lung contusions and arm fractures. She was in a coma, and on life support for some 26 days. She underwent lengthy rehabilitation, but has suffered permanent nerve damage. She also has an acquired brain injury (charge 7 – reckless conduct endangering life).

- 15 After this, you ran down Kim Trinh, aged 34. She happened to be 15 weeks' pregnant at the time. She suffered a pelvic fracture, rib fracture, multiple abrasions and bruising. This caused her to remain in hospital for three weeks. Fortunately, her baby was not harmed (charge 8 – reckless conduct endangering life).
- 16 At the same location, you struck Nethra Krishnamurthy, aged 32. She suffered multiple trauma injuries including spinal, thoracic and abdominal, the effects of which are ongoing (charge 9 – reckless conduct endangering life).
- 17 Also at the same location, you struck Melinda Cleland, aged 38. She sustained rib fractures and multiple abrasions (charge 10 – reckless conduct endangering life).
- 18 You next collided with Stuart Wilkinson, aged 48. He was walking at the time with his friend, Luke Winter. Mr Wilkinson suffered a fractured left foot, bruising, cuts and abrasions (charge 11 – reckless conduct endangering life).
- 19 Mr Winter, aged 34, suffered multiple cuts and bruises (charge 12 – reckless conduct endangering life).
- 20 As you drove along the footpath between Elizabeth and Queen Streets, you ran down a number of work colleagues who had just left a meeting. You collided with all six of them in close succession.
- 21 Jessica Mudie, aged 22, was in that group. Your car collided with her from behind. She was hurled forward against the wall of a nearby building. She died almost at once from head injuries (charge 13 – murder).
- 22 You also struck Trent Churchill, aged 31. He suffered a broken leg, a non-life threatening head injury, multiple abrasions and bruising, post traumatic amnesia and lung contusions. He spent three weeks in hospital and subsequently underwent lengthy rehabilitation (charge 14 – reckless conduct endangering life).
- 23 Also in the group was Michelle Klobas, aged 47. She was thrown some distance forward and suffered fractures all over her body. She spent several weeks in hospital

and had to undergo more than two months in rehabilitation (charge 15 – reckless conduct endangering life).

24 Another member of the group was Scott Van Bronswijk, aged 31. He suffered multiple fractures to the leg, shoulder and face (charge 16 – reckless conduct endangering life).

25 You also collided with Roberto Jaro-Erazo, aged 46. He sustained severe fractures to both legs, requiring surgery, and spent several months in rehabilitation (charge 17 – reckless conduct endangering life).

26 Last, in this particular group, you struck Belinda Spencer, aged 33. She suffered a fractured pelvis and lacerations (charge 18 – reckless conduct endangering life).

27 Near the intersection of Bourke and McKillop Streets, you ran down Matthew Si, aged 33. The force of the impact threw him forward a considerable distance. He was taken to the Royal Melbourne Hospital for emergency neurosurgery, but subsequently died from head injuries (charge 19 – murder).

28 Your next victim was Shin Jiet Lim, aged 25. She suffered multiple traumatic injuries including fractures to her hands, foot, clavicle, rib and vertebrae, as well as numerous abrasions and extensive bruising (charge 20 – reckless conduct endangering life).

29 You also struck Chang Zheng, aged 29. He suffered minor leg injuries (charge 21 – reckless conduct endangering life).

30 Your terrifying rampage continued through the intersection of Bourke and Queens Streets.

31 Bhavita Patel, aged 33, was crossing Queen Street at the time. Your car struck her forcefully and she was thrown forward a significant distance. Having never regained consciousness, she died from head injuries some ten days later (charge 22 – murder).

32 By this stage, and still driving along the footpath between Queen and William Streets, you ran down three members of the Hakin family. Nathalie, aged 46, was taking her two young daughters, Maggie, aged nine, and Tahlia, aged ten, to see a magic show

at the RACV Club.

- 33 Tahlia Hakin was holding her mother's hand when she was struck. She died at the scene from head injuries (charge 23 – murder).
- 34 Upon impact, Nathalie was thrown forward. She suffered multiple fractures including to her shoulder, ribs, pelvis, coccyx, ankles, fingers and back. She spent months in hospital and required ongoing rehabilitation (charge 24 – reckless conduct endangering life).
- 35 Maggie Hakin was seen on CCTV skipping slightly ahead of her mother and older sister. She suffered a broken leg and deep lacerations, and was in hospital for over a week (charge 25 – reckless conduct endangering life).
- 36 You next ran down Serkan Hasan, aged 28. He suffered life threatening injuries including a fractured skull, brain injury, broken nose and broken leg (charge 26 – reckless conduct endangering life).
- 37 When you collided with Mr Hasan, he was thrown into the air. His body struck Margaret Elliott, aged 85. She sustained minor injuries (charge 27 – reckless conduct endangering life).
- 38 Aaryn Melzer, aged 23, was caring for Zachary and Zara, the two young children of Matthew Bryant and Nawwar Hassan-Bryant. She was pushing the children along in a pram, having spent the morning with them at the Melbourne Museum. Your vehicle collided with the pram with great force. The pram became affixed to the bonnet of the car. According to a witness, you had manoeuvred your car, in order to ensure that you collided with the pram. That particular piece of evidence was, however, contentious. Because I do not think it makes any difference to the ultimate disposition in this case, it was agreed between the parties that I need not resolve that issue.
- 39 Zachary Matthew-Bryant was just over three months old. He was hurled from his pram, and ended up some 68 metres or so from the point of impact. Despite undergoing emergency surgery, he died the following day (charge 28 – murder).

- 40 His sister, Zara, was aged only two. She remained in the pram after it was struck, and was carried along with the car for about 150 metres. She suffered a number of serious injuries. These included a skull and spinal fractures, brain injury, facial injuries, burns and abrasions to the face (charge 29 – reckless conduct endangering life).
- 41 Ms Melzer, the children’s nanny, to whom I have previously referred, sustained a leg injury (charge 30 – reckless conduct endangering life).
- 42 Near the intersection of Bourke and William Streets, you ran down Peter Harry, aged 40. He was walking along the footpath with his partner, Briony Muller. He suffered extensive injuries. These included fractures to his skull, face, ribs and spine. He also sustained internal injuries, including brain trauma (charge 31 – reckless conduct endangering life).
- 43 Ms Muller, aged 37, suffered abrasions, bruises and an injury to her head which required stitches. The physical and psychological impacts of her injuries are ongoing (charge 32 – reckless conduct endangering life).
- 44 Lastly, you collided with Paul O’Brien, aged 37. He suffered a fractured skull and ribs, head lacerations, facial injuries, a sprained ankle and post traumatic amnesia (charge 33 – reckless conduct endangering life).
- 45 After all this carnage, you travelled a further 100 metres or so west along the footpath in Bourke Street. Your car came to a halt as a result of a combination of mechanical failure, and of it having been rammed by police. You were tasered, and shot in the right upper arm, before being arrested.
- 46 A urine sample taken from you that evening yielded positive results for amphetamine type substances, as well as barbiturates and benzodiazepines.
- 47 Several days later, on 23 January 2017, after being assessed as fit to be interviewed, you made a ‘no comment’ record of interview.
- 48 As the charges of which you were convicted make clear, you, by your deliberate and

wanton conduct, murdered six young people, none of whom you knew, and none of whom had done you any wrong. In addition, a number of the injuries that you inflicted upon those who happened to survive your murderous attack were so serious as to be life threatening. Those injuries will likely continue to impact on those victims for the rest of their lives.

49 The horror of what you did has profoundly affected the lives of many of those who were present that day in Bourke Street, and who either witnessed your actions, or their aftermath.

50 The law provides that among the main purposes for which you are to sentenced, is to punish you to an extent and in a manner that is just in all of the circumstances. I am also required to have regard to the need to deter you, and others, from committing offences of the same or a similar character. I must manifest this Court's denunciation of what you did, and ensure that the community is adequately protected from you.

51 In meeting these obligations, I must have regard to what are described as 'current sentencing practices', giving that factor appropriate, but not excessive, weight. The extraordinary nature of your offending means that there are few, if any, precedents to draw upon.

52 Plainly, I must take into account the nature and gravity of your offending, including your moral culpability for what you did.

53 I must also bear in mind the impact of your offences upon the many victims of your actions. I am required to have regard to your previous character, and to the presence of any aggravating and mitigating factors.

54 I shall consider each of those matters in the course of these reasons.

Background to the offending

55 What occurred on that Friday in the Bourke Street Mall can clearly be traced back to

the events of the preceding few months.¹

- 56 It was an agreed fact at your trial that at least throughout December 2016 and January 2017, you were suffering from what is often loosely described as a 'drug induced psychosis'.
- 57 The evidence of Dr Lester Walton, an experienced forensic psychiatrist who gave evidence at your fitness to stand trial hearing, was to the effect that a psychosis is a condition whereby a person has a distorted perception of reality. They might see or hear things that other people cannot. Alternatively, or in addition, they may have unusual ideas or beliefs that can affect their feelings and behaviour.
- 58 Self-evidently, a drug induced psychosis occurs when that psychotic-like condition is brought on by the effect of a drug or stimulant. It can also arise upon withdrawal from such a drug or stimulant. The literature on this subject makes it plain that a drug induced psychosis can occur in individuals who have a predisposition towards a recognised mental illness including, for example, schizophrenia. That accords with the evidence given before me.
- 59 Schizophrenia is a major psychotic illness that can involve disturbed thinking, including deluded ideas. Paranoid schizophrenia is a sub-type of schizophrenia, where paranoid delusions predominate. From a clinical perspective, a drug induced psychosis, and a diagnosis of paranoid schizophrenia, can appear very similar. The law provides that a drug induced psychosis is not a mental illness for the purpose of providing a defence of mental impairment to a criminal charge.²
- 60 By way of background, you were brought up by your father in Coober Pedy. When you were aged about 17, you moved to Melbourne to live with your mother. You returned to Coober Pedy almost a decade later, in about January 2016, but once again came back to Melbourne in October of that year.

¹ A comprehensive account of your increasingly erratic behaviour throughout the period between October 2016 and January 2017 is found in the detailed psychiatric report, dated 24 May 2018, prepared by Dr Andrew Carroll, which was relied upon for the purpose of the plea.

² See, eg, *R v Sebalj* [2003] VSC 181 (Smith J).

- 61 Throughout 2016, while you were in Coober Pedy, you trafficked extensively in methamphetamine, commonly known as 'ice', and also in cannabis. You claimed on your plea that, throughout that time, you barely used drugs yourself. There is strong evidence to the contrary. On any view, however, you began to use ice more frequently and in greater quantities after you returned to Melbourne.
- 62 It was at about that time that you reported having had what you described as your 'first spiritual experience'. This consisted of some delusional and paranoid thoughts.
- 63 From October 2016 through to January 2017, you reported experiencing a range of ideas that can only be described as increasingly bizarre. For instance, you told others that you had the 'God gene', and that you had seen the 'triangle of the Illuminati'. You said that you were required to contact those whom you described as 'Aboriginal royalty'. You claimed that your younger brother, Angelo, was using your car in order to dispose of the bodies of various drug dealers with whom you had been associating.
- 64 A number of people who knew you during this period described you as a changed person. They also noted that you were using large quantities of drugs, and particularly ice.
- 65 Your brother described your behaviour during these months as 'erratic' and 'unpredictable'. He said that you appeared to be 'high all the time', and that you were constantly talking about drugs. He described you as 'cooked' or 'fried'.
- 66 Your paranoia seemingly knew no bounds. You accused Angelo of conspiring to have you murdered. You told various others that he had killed one of your ex-girlfriends. You spoke frequently about killing people. Angelo described the months leading up to January 2017 as 'terrifying'. He attributed much of your behaviour to your heavy use of ice. Angelo also said that you appeared to be 'in denial' with regard to your problems with drugs.
- 67 Other acquaintances confirmed that you were using large quantities of drugs during that time. A former girlfriend reported that in the months leading up to January 2017,

you were using ice regularly. She said that you had changed significantly from the person that she had known. She added that she often saw you with a 'crack pipe' which, of course, is used to smoke ice. She said that you became 'paranoid'. She reported that you had accused Angelo and herself of trying to set you up, and of wanting to have you killed.

68 On 31 October 2016, you were in a car with your then partner, whom I shall designate 'M'. In the deluded belief that she was cheating on you, you assaulted her by repeatedly punching her. She was about five months pregnant with your child at the time. You were arrested later that day. However, for reasons that are not apparent, you were not charged in relation to that assault until several months later, when you came to the attention of police in respect of other matters on 14 January 2017.

69 Your sister reported that, after your return to Melbourne from Coober Pedy, you were 'a totally different person'. She confirmed that you were using ice regularly, and said that you were constantly engaged in 'crazy talk'. In another manifestation of your paranoia, you apparently expressed the belief that she was secretly working for the Government.

70 In December 2016, you posted a series of remarks on Facebook that made it clear just how unstable you were. You wrote about a comet that would soon destroy the Earth. You also referred, incoherently, to 'God's gift'. As will be seen, the psychiatric evidence presented on your plea strongly suggests that these bizarre beliefs were brought about by your addiction to ice.

71 It seems that your psychotic-like state worsened in January 2017. For example, on 14 January, you sent your mother a series of text messages addressing various bizarre religious themes. On the same day, you were arrested at her unit in Windsor following a complaint by a neighbour that you were threatening her, and indeed, seen to be brandishing a knife.

72 At the time, you were wanted by police on two outstanding arrest warrants. These concerned offences that you had committed several months before, on 19 November

2016. On that day, in order to evade police, you drove onto the wrong side of the road, and directly into oncoming traffic.

73 After your arrest on 14 January 2017, you were interviewed by police in relation to those two outstanding warrants. You admitted that you were aware, back in November 2016, of the dangers to others posed by your driving on the day in question. You also admitted that you knew that by driving in that way you were likely to kill, or seriously injure others. You told police that your reason for having driven in that manner had been to evade arrest. You were apparently coherent and cooperative during that interview.

74 In a hearing conducted before a bail justice on the evening of 14 January 2017, you were said to have presented your application for bail in a clear and rational manner. Despite police opposition, you were released on bail. Ironically, you were bailed to attend the Melbourne Magistrates' Court on 20 January 2017, the very day of your offending.

75 In the days following your release on bail, you quite unnecessarily attended St Kilda Police Station on at least three separate occasions. You wanted to speak with Murray Gentner, a police officer with whom you were acquainted, and with whom you apparently wished to discuss your religious ideas.

76 On 17 January 2017, you warned a friend that if, at any stage, you were chased by police, or indeed, if anyone tried to stop you, you would keep driving and start running people over. The prosecution relied upon that fact as some indication of premeditation on your part.

77 On the following day, 18 January 2017, you attended various locations within the Central Business District. You first went to CQ University in Spencer Street, where you attempted to enter the prayer room, before being told to leave.

78 You then attended the County Court in William Street, where you were seen to be behaving in a strange manner. Later that day, you telephoned the chambers of the

then Chief Justice of the Supreme Court. You claimed to have 'serious information relating to the Government'. You referred, on several occasions, to the bible, and to God.

79 At about 4.45pm that day, you attended St Francis' Church in Lonsdale Street. You were in an agitated state, speaking in a loud voice to those present. You said that you were 'filled with the spirit of God'. You referred to the priest at the church as 'the Devil'. You predicted that the end of the world was coming. You described terrorists as 'freedom fighters and heroes'.

80 Later that evening, you attended the home of your mother's partner. You assaulted him, and robbed him of his mobile phone and car keys. These were the keys to the maroon coloured Commodore, which was, of course, the car that you drove through the Bourke Street Mall.

81 Between 9.20 and 9.45pm that night, you made three telephone calls to Triple Zero. You stated that you wanted to report an emergency. You spoke of there being a comet in the sky, and went on to rant, incoherently, about underground bunkers, the pyramids in Egypt, and the 'Illuminati'.

82 Your erratic behaviour continued throughout 19 January 2017. You attended, in an agitated state, the Ashburton library. You went to the house where three of your children were then living. You also attended both a bar, and the Gatwick Hotel, in St Kilda. You were seen driving through a series of red lights, weaving through traffic at high speed, and yelling out from the window of your car.

Events of 20 January 2017

83 In the early hours of the morning of 20 January 2017, you went to your mother's unit. There, you used ice. Soon after, you proclaimed your belief that your brother, Angelo, and Ms Akiir Muo, a woman whom you were seeing at the time, were planning to kill you.

84 Shortly thereafter, at about 2.15am, in the street outside of your mother's unit, you

launched an entirely unprovoked attack upon Angelo. You stabbed him repeatedly to the head and chest with a kitchen knife. You caused him life threatening injuries.

85 You fled the scene and, at one point, shortly afterwards, were stopped by police. You were told to pull over to the side of the road. You ignored them, and sped off along Punt Road.

86 At about 2.50am, you again attended the Gatwick Hotel, in St Kilda. There, you told a friend, 'someone is following me and if I see them I will mow them down'. You also said:

I'm going to do something drastic, take everyone out, they can suffer the consequences, watch me, you'll see me tonight on the news. The police have stopped me before but they ain't gonna get me this time. I'll make you believe me.

87 Self-evidently, the prosecution relied upon these statements as evidence of premeditation, and as proof that you were well aware of the nature and quality of your actions in Bourke Street later that day.

88 Subsequently, you returned to your mother's unit. There, you grabbed Ms Muo by the arm and dragged her into the car. You spent the next hour driving in a dangerous manner, speeding and going through red traffic lights at various points throughout Melbourne.

89 After stopping at an acquaintance's house in Glen Iris for a short time, you again forced Ms Muo into the Commodore. At about 11.00am, you were spotted by police who were searching for you. They were patrolling in an unmarked car. Unaware that you were being followed, you drove normally and uneventfully through Malvern, Prahran, Toorak and South Yarra.

90 At about 11.30am, while in South Melbourne, you first became aware that police were trailing you. When told to pull over, you initially did so. However, when approached by police on foot, you accelerated rapidly and sped off along Moray Street. Police followed you for a short time before they were instructed to call off their pursuit.

- 91 You continued to drive erratically and at high speed through a series of red lights. On at least one occasion, you narrowly missed several pedestrians. At one point, you said to Ms Muo, 'I swear if [the police] catch up to me I'm gonna run everyone down in the city'. This was at least the third time that you were heard having made comments of that nature.
- 92 Shortly after you stopped at a red light in South Melbourne, members of the Critical Incident Response Team approached your car on foot. They had their firearms drawn. You pushed Ms Muo out of the door and drove off. You then travelled along the Westgate freeway, driving at high speed and in a dangerous manner.
- 93 At about 1.15pm, the police Air Wing observed your Commodore in Yarraville. Soon after, several police vehicles began following you. At that stage you were not driving dangerously, and were travelling within the speed limit.
- 94 After having ignored several requests by police to stop, you drove via the Westgate Bridge towards the city. Police were under instructions to follow you at a safe distance, but not to engage in an actual pursuit.
- 95 Driving at a slow speed, but at times along the wrong side of the road and through red lights, you eventually reached the Central Business District. By the time you arrived at Spencer Street, police vehicles had lost visual contact with you.
- 96 When you reached the intersection of Flinders and Swanson Streets, you began driving in 'doughnuts', and doing 'burnouts'. Your upper body was protruding out of the driver's window. You were yelling out, and taunting onlookers and police.
- 97 You then proceeded north along Swanston Street. By this stage, an entire convoy of police cars was following you. You began driving slowly along the Swanston Street tram tracks. You suddenly veered left onto the footpath in Swanston Street, and narrowly missed hitting a number of pedestrians. You then swung back onto the road before making a left hand turn into the Bourke Street Mall.
- 98 From this point on, you drove your car at speeds of between 57 and 61 kilometres per

hour along Bourke Street. In just moments, you travelled along four crowded city blocks. A number of pedestrians managed, somehow, to take evasive action, and avoided being hit. Tragically, many were unable to get out of the way.

99 The graphic CCTV footage, which was played to the jury at your trial, shows that you were in control of your vehicle throughout its passage along the footpath. You were able, with some skill, to manoeuvre between various fixed structures.

100 You claimed in your evidence on the plea that you were largely oblivious to what was happening as you drove along Bourke Street. I reject that evidence. I am satisfied, as were the jury, that you knew full well what you were doing. In addition, the evidence makes it perfectly clear that you knew that, by your actions, you were likely to kill or seriously injure those who happened to be in your path.

Personal circumstances

101 I turn now to your personal circumstances, which are, of course, relevant to the sentencing exercise. You were born in Adelaide in 1990. You are now 29 years of age. You were aged 27 when you committed these offences. As I have indicated, you lived from a young age with your father in Coober Pedy.

102 Your brother, Angelo, is 11 months your junior. Your parents' marriage came to an end when you were about two years old. Your father went on to have two further children, with whom you have had little contact. Your mother, who had moved to Melbourne, also went on to have a daughter, with whom you have maintained regular contact. While you were living in Coober Pedy, you only saw your mother during school holidays.

103 It was noted in Dr Andrew Carroll's report dated 25 May 2018 (which was prepared for your fitness to stand trial hearing), that you told him that your father had been 'strict and violent'. You claimed that your father would 'bash' Angelo and yourself nearly every day.

104 You were expelled from school at the age of 14. This was after you had constructed a

homemade bomb using explosives from your father's mining business. After spending some eight months completing a mechanics course, you were permitted to return to school. Ultimately, you completed year 11, although that was a struggle for you.

105 At the age of 17, you moved to Melbourne in order to live with your mother. You enrolled in a school with the intention of finishing year 12, but you dropped out after several months.

106 Although you have, in the past, undertaken some casual work in furniture removal and car detailing, you have been unemployed for most of your adult life.

107 Soon after moving to Melbourne in 2007, you met your former partner, whom I will refer to as 'A'. You had three children with her. They are presently aged about ten, nine and eight. They have remained in the care of A's mother for most of their lives.

108 You subsequently had a daughter with another former partner, whom I shall refer to as 'K'. That daughter is now aged six.

109 As I have previously said, in January 2016 you moved back to Coober Pedy. Your most recent partner, M, accompanied you there. Sometime during that year, your relationship broke down and she returned to Melbourne. You and she had a daughter, your fifth child, who was born in February 2017.

110 After you came back to Melbourne in October 2016, you moved in with your mother in Windsor. Your relationship with your brother, who also lived with your mother, was turbulent throughout. You argued frequently. By November 2016, you were no longer living in your mother's unit. It is said that you were effectively homeless, and sleeping in your car.

Prior criminal history

111 You have an extensive criminal history, which dates back to 2008. In that year, you were convicted of assault.

- 112 The following year, in 2009, you came before the Magistrates' Court on three occasions. You were charged with assault, theft, drug and driving related offences.
- 113 In 2010, you came before the Magistrates' Court on two further occasions. The first related to the possession of a controlled weapon without excuse, affray and reckless conduct endangering serious injury. You received an 18 month Community Based Order.
- 114 The second occasion was to face a total of 29 charges. Of those, ten were theft related, and seven related to assault, or either intentionally or recklessly causing injury. Four related to criminal damage, and four were driving related. That series of offences gave rise to your first actual custodial sentence, being 12 months in a Youth Training Centre.
- 115 You again came before the Magistrate's Court in 2011, this time facing seven charges. These included offensive behaviour and possessing a dangerous article. You were also charged with theft, affray, recklessly causing injury and assault. You were sentenced to a further six months in a Youth Training Centre. Three months of that sentence were to be served concurrently with the sentence that you were already undergoing.
- 116 In February 2013, you yet again came before the Magistrates' Court. This time, you were facing 25 separate charges, largely related to theft and driving offences. You also faced three charges of assault or reckless conduct either causing or endangering injury. Notably, four of those 25 charges involved attempts to evade police. These included one charge of escaping from custody, and one of resisting police. You were sentenced to 14 months' imprisonment for that offending.
- 117 In 2014, you came before the Magistrates' Court twice more. The first occasion involved 19 charges. Nine of those were driving related. Two concerned attempts to evade authorities. These included failing to stop your vehicle upon police request. You were sentenced to 18 months' imprisonment for that offending.

- 118 The second occasion involved four charges, including one for driving whilst disqualified. You were sentenced to an aggregate term of three months' imprisonment.
- 119 Lastly, prior to your Bourke Street offending you were convicted in 2015 of three dishonesty offences, and of behaving in an indecent manner in a public place. You were sentenced to two months' imprisonment.
- 120 In short, your criminal history indicates that you have, for a number of years, engaged in repeated acts of dishonesty and violence. You have, on various occasions, sought to evade or obstruct police.
- 121 Self-evidently, the offences of which you have previously been convicted are nowhere near as serious as the matters for which you now fall to be sentenced. Nonetheless, it is fair to say that you have shown yourself, over a lengthy period, to be a persistent law-breaker.
- 122 You committed these past offences at a time when there was no suggestion that you were suffering from delusions, psychosis, or any mental condition that could be regarded as mitigating. You were simply a low-level criminal, willing, on occasion, to act violently.

Verdins considerations

- 123 The sheer gravity of your offending, and the devastating consequences of your actions, would ordinarily seem to require nothing less than the imposition of life sentences on each of the murder charges, fixed terms of significant length on the reckless endangerment charges, and a complete denial of eligibility for parole.
- 124 The unusual features of this case require that I pay more careful attention to the sentencing process than that. In determining whether I should fix a non-parole period, I must have regard to a number of complex considerations, some of them pulling in different directions.
- 125 Your counsel invited me to conclude that, having regard to your state of mind at the

time you committed these offences, your moral culpability was reduced. They submitted that this reduction in culpability should be reflected in the fixing of a non-parole period.

126 To complicate the task of sentencing you still further, it is clear on the evidence that you are now suffering from a serious mental illness. You have been diagnosed with paranoid schizophrenia. Whatever may have been your exact state of mind when you committed these offences, you are now genuinely psychotic, as distinct from having, in the past, been in a drug induced psychosis. Your condition is unlikely to improve in the foreseeable future. It may even worsen.

127 A great deal of psychiatric material was placed before me on the plea. I am required to consider how the various matters raised in that material bear upon what the law describes as the *Verdins* principles.

128 As is well known, the decision of the Court of Appeal in *R v Verdins*³ holds that impaired mental functioning, whether temporary or permanent, is relevant to sentencing in a number of ways. It can reduce the moral culpability of the offending conduct, as distinct from an offender's legal responsibility (*Verdins* principle 1). It can, in some circumstances, moderate or eliminate general deterrence as a sentencing consideration (*Verdins* principle 3). It can also moderate or eliminate specific deterrence in the same way (*Verdins* principle 4).

129 Of particular relevance in your case, the existence of the condition at the date of sentencing may mean that a given sentence will weigh more heavily on an offender than it would on a person in normal health (*Verdins* principle 5). Finally, if there is a serious risk that imprisonment will have a significant adverse effect on an offender's mental health, that will be a factor tending to mitigate punishment (*Verdins* principle 6).

130 Your counsel submitted that *Verdins* principles 1, 3, 4, 5 and 6, were all relevant as mitigating factors. They submitted that these all favoured the fixing of a non-parole

³ (2007) 16 VR 269 ('*Verdins*').

period in your case. On the other hand, the prosecution submitted that *Verdins* principles 1, 3 and 4, should carry little or no weight. That is because your offending was primarily the product of your addiction to ice, a matter that cannot be taken into account by way of mitigation.

131 The prosecution acknowledged that *Verdins* principle 5 should be taken into account in your favour in support of fixing a non-parole period. Tacitly, they also acknowledged that *Verdins* principle 6 was relevant. They submitted, however, that such was the gravity of your offending, that you should be denied any non-parole period.

132 In dealing with these submissions, it is necessary to summarise the expert evidence as to your mental state, both as at January 2017 and at present.

133 Dr Walton first assessed you in September 2017. His view, at that stage, was that although your earlier ice addiction may have aggravated your psychotic state in January 2017, you were suffering from a genuine mental illness when you committed these offences. Indeed, he said that you may have had available to you a defence of mental impairment as a complete answer to these charges.

134 Dr Walton adhered to that view right up until the commencement of your trial in November 2018. It was only then, after you had been found fit to stand trial, and after having given careful consideration to Dr Carroll's report, that Dr Walton changed his mind. He no longer considered that you had available to you a legal defence of mental impairment, and said that he would not give evidence in support of any such defence.

135 Dr Walton thereby agreed with Dr Carroll that the explanation for your behaviour on the day of your offending stemmed from your extensive drug use. In other words, your schizophrenia did not fully develop until some time after you committed these offences. It was in the light of Dr Walton's change of position that your counsel determined that you could not raise the defence of mental impairment at your trial, and you ultimately did not do so.

- 136 In a brief supplementary report to the Court dated 23 January 2019, Dr Walton reaffirmed that your drug use was likely to have been the ‘principally relevant cause’ of your psychotic symptoms, as displayed when you committed these offences. He nonetheless concluded that it was very likely that your psychotic disturbance at that time did make ‘at least some contribution to the offending’ for *Verdins* purposes.
- 137 Dr Carroll, at all times, rejected the notion that you were mentally impaired in the sense required to constitute a legal defence when you committed these offences. He considered that you were fully aware, in January 2017, of the nature, quality and wrongfulness (in the relevant legal sense) of your actions. His view was that your delusions on the day in question were the product of your extensive history of ice addiction.
- 138 Professor Michael Daffern agreed with Dr Carroll that you had no legal defence of mental impairment available to you. He also reported that you suffered from significant longstanding personality difficulties. He formed the view that you met the diagnostic criteria for both Anti-social and Narcissistic Personality Disorders. The latter diagnosis was based on what he categorised as your grandiose sense of self-importance, your need for excessive admiration (i.e. needing the undivided support and attention of intimate partners and family), your sense of entitlement in the way that you treat others, your interpersonally exploitative traits (i.e. your history of taking advantage of others), your past lack of empathy (i.e. history of displaying excessive violence unaccompanied by regret), and your arrogant attitudes and behaviour (such as having regarded yourself as special, strong and attractive).
- 139 The diagnosis of Anti-social Personality Disorder was characterised by your failure to conform to social norms (i.e. your criminal tendencies), your deceitfulness (as indicated by your repeatedly lying about your criminal history and substance abuse), impulsivity, irritability and aggressiveness. Professor Daffern also noted your persistent disregard for the safety of others, lack of stable and reliable commitment to employment, and lack of remorse in relation to prior criminal offending.

- 140 In relation to the Bourke Street offences, Professor Daffern wrote that, on that day, you were certainly suffering from paranoid delusional beliefs. You were likely to have been intoxicated, sleep deprived and distressed. Ultimately, however, you knew the nature and quality of your conduct. You also knew that what you were doing would be regarded by reasonable people as wrong.
- 141 Dr Douglas Bell has been your treating psychiatrist since early 2017. He said that you were suffering from a paranoid schizophrenic illness, from the time when he first saw you. In a supplementary report prepared for your plea, he said that your 'extensive system of grandiose and bizarre religious delusional beliefs' persist, and remain 'incurably intact as before'. He regards your mental state as 'essentially unchanged'.
- 142 Dr Bell recorded that you were treated at Thomas Embling Hospital in August and September 2018, where you were commenced on the antipsychotic medication, Clozapine. Due to the physical side effects of that drug, namely some cardiological abnormalities, it was agreed that any further dose increase 'should proceed very cautiously over a prolonged period'. He also recorded that you are receiving an additional antipsychotic medication, Aripiprazole.
- 143 Dr Bell noted that over the past two months, you have demonstrated 'modest but noticeable' increases in energy, motivation and self-care. Ultimately, however, he concluded that 'there remain reasonable grounds for cautious optimism that with ongoing treatment there will be at least an attenuation in [your] core delusions and, less optimistically, some possibility of a substantial resolution of them.' Dr Bell nonetheless characterised your prospects as 'poor'. He said that he could not foresee a time, at any point in the future, where it would not be necessary for you to be receiving treatment. Importantly, he said that the true effects of your current medication will not be known for at least another six to 12 months, and must therefore be the subject of some conjecture.
- 144 Dr Bell also gave a detailed description of the conditions under which you are presently being held. His evidence was that you are kept segregated from other

prisoners. You are locked up in a small cell for 23 hours per day, with only one hour for exercise or other activities. You have access to books, magazines, television and radio, but so far as treatment is concerned, the conditions under which you are held are far from ideal.

145 That said, Dr Bell observed that if your management environment were to change, or you were to be moved to another location, the prison system would likely be able to provide you with the psychiatric care that you need.

146 In summary, Dr Walton, Dr Carroll and Professor Daffern, all agreed that you were not mentally impaired within the meaning of that term under the provisions of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. You were not suffering from a mental illness at the time that you committed these offences. Rather, you were experiencing what has been described as a drug induced psychosis.⁴

147 In addition, you were fully aware of the nature and quality of your actions on the day in question. You knew, full well, what were the likely consequences of what you did.⁵ You appreciated that your conduct would generally be regarded, by reasonable people, as wrongful.

148 Two questions arise out of this medical evidence. The first is, to what extent, if at all, can you rely upon your disordered mental state as at January 2017 as a mitigating factor? The second is, to what extent, if at all, can you rely upon your current mental illness in amelioration of any sentence that I impose?

149 As regards the first question, I am of the view that your mental state at the time of your offending cannot, to any significant degree, constitute a mitigating factor through a lessening of your moral culpability.

150 You were well acquainted with the effects of methamphetamine. You knew what the use of that drug meant so far as your own behaviour was concerned. As the law in

⁴ I note the evidence of Dr Morris Odell to the effect that three days after the offending, you were not displaying psychotic symptoms that would interfere with your being interviewed by police.

⁵ This evidence was elicited in cross-examination by the prosecution during the course of the trial.

this State stands, any violent acts carried out under the influence of a drug such as ice are not to be treated as giving rise to a mitigating factor, under *Verdins* principle 1.⁶

151 I agree with the prosecution submission that *Verdins* principles 3 and 4, concerning general and specific deterrence respectively, can, at best, be of only the most limited relevance to your case. The moderating influence that they have upon your sentence arises essentially because of your present condition, and not because of your drug induced psychosis at the time of the offending. General deterrence remains an important sentencing consideration. If nothing else, any sentence that I impose upon you should send a message, loudly and clearly, to those who are minded to use a drug such as ice. The fact that you were under the influence of that drug when you committed violent offences will not be regarded as a basis for leniency in sentencing.

152 As I have indicated, your counsel placed particular emphasis upon *Verdins* principle 5 (and to a lesser extent, *Verdins* principle 6) in support of your being given a non-parole period.

153 I am satisfied on the evidence, and particularly that of Dr Bell, that your time in prison will be more onerous, and weigh more heavily upon you, than would be the case for someone not suffering from your current mental illness. Your condition is chronic, and may, as I have said, continue to affect you well into the future, and perhaps forever. Accordingly, you seem to me to fall within *Verdins* principle 5.

154 Dr Bell's evidence also seems to me to support the conclusion that you fall within *Verdins* principle 6. Being kept, as you have been up until this point, in virtual solitary confinement, where you cannot receive appropriate treatment, may well exacerbate

⁶ See *DPP v Kao* [2009] VSCA 273 (Weinberg JJA and Coghlan AJA). See also, in relation to self-induced intoxication in general, *R v De Jesus* (1986) A Crim R 402, 405 (Kennedy J); *R v Lane* (1990) 53 SASR 480, 484 (Matheson J); *R v Redenbach* (1991) 52 A Crim R 95 (Young CJ, Brooking and Marks JJ); *R v Gordon* (1994) 71 A Crim R 459 (Hunt CJ, McInerney and Sully JJ); *Douglas v The Queen* (1995) 56 FCR 465 (von Doussa, Higgins and RD Nicholson JJ); *R v Rosenberger* [1995] 1 Qd R 677, 678 (Fitzgerald P, Lee J and Pincus JA); *R v Howell* (2007) 16 VR 349 [19] (Nettle JA); *R v McRae* [2008] VSCA 74 (Vincent, Ashley and Dodds-Streeton JJA); *R v Dwyer* [2008] QCA 117 (de Jersey CJ, Keane JA and Douglas J); *DPP v Vučko* [2008] VSCA 270 (Maxwell P, Nettle and Redlich JJA); *Hasan v R* (2010) 31 VR 28 (Maxwell P, Redlich and Harper JJA); *Adams v The Queen* [2011] VSCA 77 (Nettle and Redlich JJA and Kyrou AJA); *R v Thomason* [2011] QCA 9 (de Jersey CJ, Chesterman and White JJA); *R v Sheather* [2011] NSWSC 1239 (Hoeben J). Cf *R v Sebj* [2006] VSCA 106 (Maxwell P and Vincent JA).

your condition. That is a matter to be taken into account.

The issue to be resolved on the plea

- 155 Your counsel readily accepted on the plea that you should be sentenced to life imprisonment on each of the six charges of murder of which you have been convicted. Each of these offences can be described as falling within the ‘worst category’ of that most serious of crimes. In accordance with what the High Court has recently said, they therefore all potentially merit the maximum sentence for that offence.⁷
- 156 As regards the reckless endangerment offences, these are all, to various degrees, serious examples of such offending. In some instances, your actions resulted in very serious, even life threatening, injury to those whom you ran down. Even so, none of these cases quite fall within the ‘worst category’ of reckless endangerment. I propose to impose, so far as it is possible to do so, sentences for those offences that are broadly commensurate with the extent of the injuries suffered.
- 157 As I have said, the prosecution submitted that you should be required to serve every day of the rest of your life in prison, and that you should be denied the possibility of parole. Your counsel submitted that, despite the gravity of your offending, that most extreme of all steps is not warranted in your case.
- 158 The law provides that I must fix a non-parole period unless I consider that the nature of your offences, or your past history, make the fixing of such a period inappropriate.⁸ Bad as your criminal record is, I do not regard your past history as making it inappropriate to fix a non-parole period.
- 159 It has been said that only rarely will the nature of an offence be treated as sufficiently grave to warrant a refusal to fix a non-parole period.⁹ In particular, the fact that the crime for which a sentence is being imposed warrants the imposition of the maximum

⁷ *R v Kilic* (2016) 259 CLR 256 (Bell, Gageler, Keane, Nettle and Gordon JJ).

⁸ See *Sentencing Act 1991* s 11(1).

⁹ Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (Lawbook Co., 3rd ed, 2014) 865. See also *Archibold v The Queen* (1989) 40 A Crim R 228 (Malcolm CJ, Wallace and Walsh JJ) and *R v Denyer* [1995] 1 VR 186 (Phillips CJ, Crockett and Southwell JJ).

penalty does not preclude the fixing of a non-parole period. Indeed, the High Court has said that the more severe the maximum penalty, the more appropriate it is that a minimum term be set.¹⁰ That is to allow for the possibility, in such a case, of some mitigation of the punishment.

160 Parole provides for mitigation of a sentence in favour of a prisoner's rehabilitation. It does so through conditional freedom once the prisoner has served the minimum term that a judge determines justice requires. Parole is said to serve not only the offender, but also the interests of the community. That is so, even where it is accepted that the community must be protected from dangerous offenders.

161 It is important to emphasise that the fixing of a non-parole period does not amount to the imposition of a separate sentence. It is merely a direction regarding how much of the sentence that is imposed must be served in actual custody before the prisoner can even be considered for parole. It is a mistake to refer to a non-parole period as a minimum sentence. In truth, there is but one sentence, and that is the sentence imposed by the sentencing judge. That sentence cannot be altered by the parole authority. In your case, that sentence on each charge of murder will be one of life imprisonment.

The prosecution submissions regarding denial of a non-parole period

162 In support of its overall submission that no non-parole period should be fixed in your case, the prosecution, in its written submissions on the plea, said:

... no parole period should be imposed in this case. The court will be urged to find that, given the nature of the offences, the fixing of a non-parole period is inappropriate. The following factors are relied upon in support of the submission:

- (i) The fact that the prisoner has committed multiple murders;
- (ii) Two of the murders involve children;
- (iii) The manner in which the offences were committed puts the prisoner's moral culpability at the highest level;
- (iv) Although the trial was short and many facts were admitted, the

¹⁰ *Deakin v The Queen* (1984) 54 ALR 765 (Gibbs CJ, Murphy, Brennan and Dawson JJ).

prisoner is not entitled to avail himself of section 5(2AC)(e) of the [Sentencing Act 1991], namely a plea of guilty;

- (v) The serious reckless conduct offences he has been convicted of involve 27 direct victims struck by his vehicle. The impact of the crimes upon them need to be reflected in the sentence imposed;
- (vi) The prisoner has amassed an unenviable criminal history that reflects both crimes of violence and offences where he has driven a car putting other road users at serious risk;
- (vii) Apart from the obvious need for general deterrence, specific deterrence features prominently in this case;
- (viii) The court, representing the community, needs to stress that the law will operate to protect innocent members of the public going about their affairs. This is a matter of, justifiable, current community concern.¹¹

163 The prosecution submitted that your offending involved an ‘unspeakable disregard for the sanctity of human life’. It described the six murders that you committed as among the worst such offences to have come before this Court, at least in recent years. There is considerable force in both that submission and description.

164 The prosecution further submitted that although your convictions for murder were based on what is often loosely described as ‘reckless’, rather than intentional, killing, that should not be regarded as a mitigating factor in this case. Nor should it lessen the objective gravity of your offending. You knew that, by your actions, you were likely to kill, or at least seriously injure, many innocent pedestrians. That did not phase you. I also accept the prosecution submissions in that regard.

165 The prosecution pointed to the evidence that suggested that your offending was, to some degree at least, premeditated. I have already detailed the series of statements that you made in the days preceding the offending, whereby you foreshadowed the havoc that you went on to cause. Plainly, that submission regarding premeditation is correct.

166 In addition to those considerations set out above, the prosecution relied upon other less important, but still relevant, aggravating factors. For example, these offences were

¹¹ Citations omitted.

all committed whilst you were on bail.

167 Next, the prosecution noted you are to be sentenced as a 'serious violent offender' pursuant to Pt 2A of the *Sentencing Act 1991* on the murder charges following charge 4. The effect of Pt 2A is that relevant sentences should be served cumulatively, rather than concurrently, subject to the principle of totality. In addition, the protection of the community is elevated in importance, and becomes the paramount consideration when sentencing such offenders.

168 There is one other matter to which I am required to have regard. That is, the effect of your offences upon the various victims in this case, as shown, for example, through the victim impact statements that were tendered, and in some cases read, on your plea.

169 There were in total some 55 victim impact statements. As would be expected, the makers of those statements included the relatives and friends of the deceased, those victims who were injured, and some of the many people who were present and suffered serious trauma as a result of what they experienced on that day.

170 Unsurprisingly, your crimes have had a shattering effect on countless lives. Among many heartfelt statements, those made by the family members of those who died were particularly powerful.

171 Yosuke Kanno's parents, Masayuki and Minako, described the tragic loss of their young son, and of having to deal with his death from the other side of the world. Emily Mudie spoke of having to inform her family in Sydney that her twin sister, Jessica, had died. She recalled hearing her mother's 'heart break' over the other end of the telephone. Mitesh Patel described the pain of having to remain strong and provide support for his grieving parents, while at the same time struggling to cope with the loss of his sister. Melinda Tan, Matthew Si's wife, spoke of the painful reality of having to raise their very young daughter on her own. Matthew Bryant spoke of having to make the unbelievably difficult choice to leave the hospital bedside of his severely injured daughter, Zara, in order to bury his son, Zachary. Although the members of the Hakin family chose not to make victim impact statements, I do not doubt for a

moment the enormity of their suffering.

172 The effects of your actions on those who were lucky enough to survive have been similarly profound. A number suffered debilitating physical injuries, which rendered them unable to walk. Some also spoke of their suffering from ongoing internal injuries, such as those resulting in impaired cognitive functioning. Some victims can no longer work, pursue their desired career, or maintain relationships.

173 The trauma which you wrought upon so many that day was not limited to physical injuries. Numerous statements were tendered that spoke of the immense and long lasting psychological damage that you inflicted, including upon those who were performing their duties as first responders, as well as ordinary people who were simply present and offered assistance. Their courage, in the face of horrific circumstances, should be recognised.

174 I am well familiar with victim impact statements, having read many of them over the years. I have heard victims deliver deeply emotional accounts of the effect of various offences upon them. Even so, being present in this Court, listening to more than a day and a half of such statements, and having read numerous others that were tendered, was an agonising experience. One could not but be profoundly moved by the terrible devastation that you, by your actions, brought about that day.

Defence submissions regarding the fixing of a non-parole period

175 Your counsel referred me to a number of cases where, it was said, murders that were individually more horrific than those of which you were convicted, had still resulted in the fixing of non-parole periods.

176 There are few cases that can properly be used as comparators for determining whether you should be denied eligibility for parole. I shall not go through the examples of terrible murders where, notwithstanding the objective gravity of the offences, non-parole periods were fixed.¹² Nor shall I detail those cases where, particularly in recent

¹² See, eg, *R v Knight* [1989] VR 705 (where a 27 year non-parole period was fixed) (Hampel JJ); *R v Denyer* [1995] 1 VR 186 (Phillips CJ, Crockett and Southwell JJ) (where the Court of Appeal allowed an appeal

times, eligibility for parole was denied.¹³ I have, however, read the sentencing remarks in all of those cases closely.

177 Your counsel submitted that I should take into account the fact that, although you stood your trial, you did not challenge any of the facts alleged against you. Indeed, you formally admitted virtually all of them and conceded that the elements of the offences with which you were charged were made out.

178 Your decision to allow the trial to proceed in that way meant that it was able to be completed within just a few days. Had you insisted, as would have been your legal right, upon putting the prosecution to its proof on every issue, your trial would have run for many weeks. In that sense, your cooperation has been of considerable utilitarian value. Importantly, it has spared many witnesses the ordeal of having to give evidence in a difficult, and highly emotional, setting.

179 The prosecution acknowledged that although you stood your trial, and cannot therefore receive the statutorily mandated discount for having pleaded guilty, your cooperation was a matter to which regard should be had when considering whether to fix a non-parole period.

180 Your counsel also submitted that you had shown some level of remorse. You gave evidence, on your plea, to that effect. You expressed regret for what you had done, and said that you felt sympathy for those whom you had killed and injured. You also expressed sympathy for their families.

181 You immediately followed these professions of remorse with a series of what can only

against a refusal to set a non-parole period on a life sentence for murder and directed that a 30 year non-parole period instead be fixed); *R v Farquharson* [2010] VSC 462 (Lasry J) (where the offender, who murdered his three children by drowning them in a dam, received a non-parole period of 33 years); *Hudson v The Queen* (2010) 30 VR 610 (Ashley, Redlich and Harper JJA) (non-parole period of 35 years imposed).

¹³ See, eg, *R v Coulston* [1997] 2 VR 446 (Winneke P, Brooking JA and Southwell AJA) (where the Court of Appeal upheld a refusal to fix a non-parole period on a life sentence after a re-trial, although initially a 30 year period had been fixed); *R v Lowe* [1997] 2 VR 465 (Winneke P, Brooking JA and Southwell AJA); *R v Camilleri* (2001) 119 A Crim R 106 (Phillips CJ, Brooking and Ormiston JJA); *R v Dupas* [2001] VSCA 109 (Winneke P, Phillips and Batt JJA); *R v Debs* [2005] VSCA 66 (Warren CJ, Winneke P and Vincent JA); *R v Coombes* [2011] VSC 407 (Nettle JA); *R v Cardamone* [2017] VSC 493 (Lasry J). Self-evidently, a refusal to fix a non-parole period will be more likely in circumstances where the case involves multiple murders.

be described as irrational rants, in which you sought to shift responsibility from yourself, and attribute blame to others.

182 I do not accept that you are genuinely remorseful. That being said, I am not confident that, given your current condition, you are capable of remorse. In any event, your evidence in that regard was unconvincing and in cross-examination, was exposed as false in certain key respects. For example, your insistence that you had not been using drugs to any significant degree in the period leading up to the commission of these offences, was patently at odds with established fact.

183 Whether your testimony in that respect was deliberately false, or merely the product of your present mental condition, I need not determine. The law provides that the onus rests upon an offender who seeks to rely upon remorse to establish that it is genuine. An absence of remorse is not, of itself, an aggravating factor. However, a profession of remorse which is not genuine cannot be given any weight by way of mitigation.

184 There is one other factor that was said to count in your favour in terms of fixing of a non-parole period. If I were to accede to the prosecution submission that you be denied eligibility for parole, you would, given your age, face the possibility of perhaps 60 years or more in prison.

185 There is authority to suggest that your relatively young age should count in favour of my fixing a non-parole period.¹⁴ I have accordingly taken your age into account.

186 However, by far the main factor in support of fixing a non-parole period in your case lies in the exceptional feature arising out of your present mental condition. That encompasses your problematic prognosis, and Dr Bell's observations regarding the conditions of your incarceration.

187 With regard to the reckless endangerment offences of which you have been convicted, I have taken into account the fact that your entire offending, which occupied only a

¹⁴ *R v Denyer* [1995] 1 VR 186.

minute or so, constituted what the law describes as a single course of conduct. If the endangerment charges stood alone, that would be a factor, in accordance with the principle of totality, tending against significant cumulation of sentences.

188 The principle of totality is largely academic in your case. Once a sentence of life imprisonment is imposed, no other sentence can be cumulated upon it. I could, theoretically, cumulate some component of the individual fixed term sentences that are to be imposed on the reckless endangerment charges. However, both sides accepted that the better way of dealing with the need to ensure adequate punishment for those offences, as well as for the six murders of which you were convicted, would be to take all of the endangerment charges into account when determining whether to fix a non-parole period. They would, of course, also be taken into account in determining the length of any such non-parole period, if one were to be fixed.

Sentence

189 Mr Gargasoulas, will you please stand.

190 This Court now sentences you as follows:

- On charge 1, for recklessly endangering the life of Hugh Johnston, to two years' imprisonment;
- On charge 2, for recklessly endangering the life of Dilan Hoole, to two years' imprisonment;
- On charge 3, for recklessly endangering the life of Jelena Susa, to four years' imprisonment
- On charge 4, for the murder of Yosuke Kanno, to life imprisonment
- On charge 5, for recklessly endangering the life of Kashu Matsumoto, to two years' imprisonment;
- On charge 6, for recklessly endangering the life of Michael Hepponstall, to two years' imprisonment;

- On charge 7, for recklessly endangering the life of Erin Shi, to six years' imprisonment;
- On charge 8, for recklessly endangering the life of Kim Trinh, to four years' imprisonment;
- On charge 9, for recklessly endangering the life of Nethra Krishnamurthy, to six years' imprisonment;
- On charge 10, for recklessly endangering the life of Melinda Cleland, to four years' imprisonment;
- On charge 11, for recklessly endangering the life of Stuart Wilkinson, to two years' imprisonment;
- On charge 12, for recklessly endangering the life of Luke Winter, to two years' imprisonment;
- On charge 13, for the murder of Jessica Mudie, to life imprisonment
- On charge 14, for recklessly endangering the life of Trent Churchill, to four years' imprisonment;
- On charge 15, for recklessly endangering the life of Michelle Klobas, to four years' imprisonment;
- On charge 16, for recklessly endangering the life of Scott Van Bronswijk, to four years' imprisonment;
- On charge 17, for recklessly endangering the life of Roberto Jaro-Erazo, to four years' imprisonment;
- On charge 18, for recklessly endangering the life of Belinda Spencer, to four years' imprisonment;
- On charge 19, for the murder of Matthew Si, to life imprisonment;
- On charge 20, for recklessly endangering the life of Shin Jiet Lim, to four years' imprisonment;
- On charge 21, for recklessly endangering the life of Chang Zheng, to two years' imprisonment;

- On charge 22, for the murder of Bhavita Patel, to life imprisonment;
- On charge 23, for the murder of Tahlia Hakin, to life imprisonment;
- On charge 24, for recklessly endangering the life of Nathalie Hakin, to six years' imprisonment;
- On charge 25, for recklessly endangering the life of Maggie Hakin, to four years' imprisonment;
- On charge 26, for recklessly endangering the life of Serkan Hasan, to six years' imprisonment;
- On charge 27, for recklessly endangering the life of Margaret Elliott, to two years' imprisonment;
- On charge 28, for the murder of Zachary Matthew-Bryant, to life imprisonment;
- On charge 29, for recklessly endangering the life of Zara Matthew-Bryant, to six years' imprisonment;
- On charge 30, for recklessly endangering the life of Aaryn Melzer, to two years' imprisonment;
- On charge 31, for recklessly endangering the life of Peter Harry, to six years' imprisonment;
- On charge 32, for recklessly endangering the life of Briony Muller, to four years' imprisonment; and
- On charge 33, for recklessly endangering the life of Paul O'Brien, to four years' imprisonment.

191 Each of the sentences on the charges of reckless endangerment will be served concurrently with each other and, self-evidently, with each of the six life sentences for murder.

192 Despite the mitigating factors upon which your counsel relied, your crimes can only be described as horrendous. Your actions were both callous and cowardly. Even making allowance for your disordered state of mind, you seem to have been concerned, primarily, with evading police, no matter at what cost. As I have said, you

have shown no genuine remorse, and I do not accept that you have displayed any true empathy for those whose lives you have shattered or destroyed.

193 Any sentence that I impose must reflect the community's thorough denunciation of what you did.

194 The law requires that I have regard to those exceptional features of your case that provide support for the fixing of a non-parole period. I have discussed these earlier in my sentencing remarks and need not repeat them. Nonetheless, the need to ensure that you are adequately punished for what you did, and that the community is adequately protected from you, means that any such non-parole period would have to be one of exceptional, even extraordinary, length.

195 Accordingly, I now fix a non-parole period of 46 years, that being, in my view, the minimum period necessary to ensure that something approaching just punishment for your offences is achieved.

196 In accordance with Part 2A of the *Sentencing Act 1991*, you fall to be sentenced as a serious violent offender on the charges of murder following charge 4. For the avoidance of doubt, I do not propose to impose a disproportionate sentence. Having regard to your six life sentences, it would be pointless to do so.

197 Pursuant to s 78(1) of the *Confiscation Act 1997*, I make the disposal order sought by the prosecution.

198 I declare a period of 763 days as pre-sentence detention, not including this day.

199 I direct that those matters be entered into the records of the Court.

200 Remove the prisoner, please.